IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10771 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PATEL SHITAL NATWARBHAI & 3 - Petitioner(s)
Versus
UNION OF INDIA SECRETARY, MINISTRY OF HEALTH & 5 - Respondent(s)

==========

Appearance :
MR DP VORA for Petitioner(s) : 1 - 4.
MR SAMIR J DAVE for Respondent(s) : 1,
MR PURVISH J MALKAN for Respondent(s) : 1,
None for Respondent(s) : 2,
MR MITUL K SHELAT for Respondent(s) : 3,
MS. SANDHYA NATANI, AGP. for Respondent(s) : 4 - 6.

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 05/12/2006

ORAL JUDGMENT

1 This petition has been filed by four different students praying for following reliefs :

> *"24. The petitioners, therefore, pray that Your Lordships will be pleased :-*
> *A) to quash and set aside the letter No.HCG/1003/DHG/3/4 dated 22.5.2003 (Annexure-A) issued by respondent refusing change of college to the petitioners and order and direct by a writ of mandamus or by any other suitable writ, order or direction in the nature of mandamus and direct the respondents to give change to the petitioners studying in First Year M.B.B.S. Course in Surat Medical College to Vadodara Medical College from the next term;*
>
> *B) to grant any other relief which may be suitable and expedient in the circumstances of the case;*
>
> *C) to grant cost of this petition."*

2 It is an admitted fact that four petitioners applied for admissions in medical course for the academic year 2002-2003 stating first preference to be the Medical College, Vadodara. That

after preparation of merit list the four petitioners were granted admissions in Medical College, Surat as seats were not available in Medical College, Vadodara. The petitioners thereafter sought transfer from the Medical College Surat to Vadodara on the ground that about six seats had fallen vacant in the Medical College at Vadodara . The respondent- State vide communication dated 22.5.2003 rejected the request in light of the judgments rendered by the Apex Court on 24.1.2003 and 27.1.2003.

3 According to the petitioners though 1375 seats had been sanctioned for the State of Gujarat at the point of time when interviews were held from 11.9.2002 to 22.10.2002 only 1025 seats were available for filling up on the basis of the merit list in which the petitioners figured and were granted admissions. That subsequently 350 seats became available and on the basis of the same merit list students were granted admissions. That as some of the students who were granted admissions in Medical College, Vadodara did not join the College the vacancies arose and the petitioners sought to be accommodated in the said vacancies. The entire case of the petitioners is based on the Apex Court decision rendered in the case of *Sharwan Kumar Vs. Director General of Health Services and Another, (1993) 3 SCC 332* with special reference to the scheme framed in paragraph No.9 of the said decision. According to the petitioners by virtue of clause 15 of the scheme which calls for second round of allotment the respondent authorities were bound to carry out such second round of allotment and the same having not been carried out the petition is required to be allowed. The respondent authorities never

conducted second round of counselling and thus deprived the petitioners of their right to be accommodated on the vacant seats.

4 The respondent- State has tendered affidavit-in-reply and in paragraph No.7 stated thus :

> *"7. I state and submit that it is not corrected that only one counselling was done . In fact, two separate counselling were done. First one from 11.9.2002 and second from 2.12.2002, because all the students were called for second counselling and they were not only offered admission in new seats but also offered admission in the Medical College, of their higher choices, according to their merit cum preference cum availability of seats. It was not that, during first counselling admission were given up to merit No.1025 and later on 350 admissions, after merit No.1025. Under these circumstances, it is not correct that only one counselling from 9.12.2002 to 1.1.2003 were carried out".*

5 The aforesaid averments have been met by the petitioners by making following the averments in the affidavit-in-rejoinder :

> *"16. I say and submit that in para-7 of the affidavit respondents have taken a contention that not one, but two counselling were done. One counselling was done*

from 11.9.2002 onwards and the second counselling was done from 9.12.2002 onwards. I say and submit that this contention is absolutely false. Two counselling were never made. One counselling was made. Due to riots in the State of Gujarat, the first counselling was bifurcated into two parts. One part of counselling was held from 11.9.2002 to 22.10.2002. And the another part of the first counselling was held from 9.12.2002 to 1.1.2003. I submit that first counselling was concluded on 1.1.2003. Thereafter no second counselling was held. I submit that the dates of first counselling are matters of record with the respondents. The two dates given by the respondents are the dates of two parts of first counselling. Respondents have treated two parts as two counselling which is absolutely false. I say and submit that second counselling under the said Rule-15 is compulsory and imperative. It is in second counselling that a change of college can be given. Rule–15 has been expounded in details in above paras. I simply say that the contention under reply should not have been taken by the respondents. It is not worthy of respondents to take a wrong and incorrect contention."

6 In the circumstances, in the first instance, whether second round of counselling had taken place or not has become a disputed question of fact in light of contrary averments made by two sides. Therefore, in so far as this ground on which the petition is based cannot be entertained as disputed questions of fact are involved.

7 In so far as the contention based on clause 15 of the scheme framed by the Apex Court is concerned, the respondent authorities have relied upon the judgment of the Apex Court rendered on 24.1.2003 in Writ Petition (Civil) No.407 of 2001 in the case of Ms. Neelu Arora & Anr. Vs. Union of India & Ors.,wherein it has been observed as under :

> *"When a detailed scheme has been framed through orders of this Court and the manner in which it has to be worked out is also indicated therein, we do not think that if in a particular year there is any short fall or certain number of seats are not filled up; the same should be done by adopting one more round of counselling because there is no scope for the third round of counselling under the Scheme. It would not be advisable to go on altering the scheme as and when seats are found vacant. What is to be borne in mind is that broad equality will have to be achieved and not that it should result in any mathematical exactitude. Out of about 1600 seats, if 250 seats are not filled up for various reasons, we do not think it should result in the third round of counselling. If that process is to be adopted then there will be again vacancies and further filling up of the seats falling vacant will have to be undertaken. In that process, it will become endless until all the seats under the All-India Quota are filled up. That is not the object of the Scheme formulated by this Court. The*

object was to achieve a broad based equality as indicated by us at the outset and we do not think that any steps have to be taken for altering the Scheme. Moreover, this Court in Medical Council of India Vs. Madhu Singh & Ors. 2002 (7) SCC 258, has taken the view that there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if seats are unfilled that cannot be a ground for making mid-session admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. If these aspects are borne in mind we do not think any reliefs as sought for by the petitioners can be granted under these petitions".

8 This judgment was followed by another judgment rendered on 27.1.2003 in Writ Petition (Civil) No. 393 of 2002 in the case of *Supreet Baltra & Ors. Vs. Union of India & Ors*., wherein after reiterating earlier pronouncement made in case of *Neelu Arora & Another* (supra) it was stated :

"Moreover, this Court in Medical Council of India Vs. Madhu Singh & Ors., 2002 (7) SCC 258, has taken the view that there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if seats are unfilled that cannot be a ground for making mid-

sessions admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. If these aspects are borne in mind we do not think any reliefs as sought for by the petitioners can be granted under these petitions. These writ petitions shall stand dismissed".

9 In the aforesaid circumstances, once the Apex Court has itself expounded as to how the scheme has to be worked out. Nothing further is required to be done at this stage. Admittedly, as per the subsequent two judgments of the Apex Court, even if the seats fall vacant no further reshuffling is permissible and this includes transfer from one college to another.

10 Last but not the least. The most important point is that the admission was sought for academic year 2002-2003 which is since over and thereafter three more academic years have gone bye. In the circumstances, even otherwise, the entire controversy having become academic the petition is not required to be entertained.

11 In the result, the petition is rejected. Rule discharged. There shall be no order as to costs.

(D.A. Mehta, J)

m.m.bhatt